SUPREME COURT, U. S.

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MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-570

SOUTHWIRE COMPANY and SOUTHWIRE REALTY COMPANY,
Petitioners,

vs.

METAL EQUIPMENT COMPANY,
Respondent.

BRIEF OF RESPONDENT OPPOSING PETITION FOR WRIT OF CERTIORARI AND MOTION FOR AWARD OF DAMAGES FOR DELAY CAUSED BY APPEAL

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OPINIONS BELOW

The opinions of the Georgia Appellate Courts appear in the Appendix to Petition for Writ of Certiorari.

JURISDICTION

Respondent does not question the jurisdiction, as such, as set forth in the petition.

QUESTIONS PRESENTED

The petitioners set forth no proper question for review in that no ruling has ever been made upon petitioners' grievance by any court below.

CONSTITUTIONAL PROVISIONS INVOLVED

Respondent makes no objection to petitioners' statement of the constitutional provisions involved.

STATEMENT OF THE CASE

Petitioners' statement of the case is substantially correct. However, petitioners state they had no notice of a hearing before the State Court of Carroll County, Georgia which resulted in judgment in favor of respondent against petitioners. This allegation denying notice simply is not true; there is nothing anywhere in the record to support such allegation, and same is denied by respondent.

No objection was ever made to the State Court of Carroll County following the summary judgment granted to respondent, because of lack of notice or otherwise. That Court never ruled on a motion for rehearing, motion to set aside the judgment, or any other motion or objection whatsoever, because none was made. Petitioners first made their allegation that they had received no notice of hearing in their brief to the Court of Appeals of Georgia. (See opinion of Georgia Court of Appeals, at p. 9 of Petition). It is a bare allegation, which is simply false, and no court in this state has ever had the question properly brought before it.

REASONS FOR NOT GRANTING THE WRIT

Respondent has no quarrel with petitioners' position that judgments taken against any person without any opportunity to be heard are improper, void, and unconstitutional. However, no court in the State of Georgia has ever ruled that petitioners were not denied notice of the hearing, nor has any court of this state ever sanctioned petitioners' allegation that judgment was entered against them as a result of a hearing without notice.

The Court of Appeals of Georgia, in its opinion reported as shown on page 9 in the petition disposed of the matter sought to be brought before this Honorable Court as follows:

"The record shows service of a motion and rule nisi for summary judgment by plaintiff upon defendant's attorney. The record further shows a stipulation of facts to be used on the hearing. The claim, made for the first time in this court, that the copies served upon the defendants' attorney were not filled in as to the time of hearing and for that reason defendants' attorney was not notified of the time of hearing, is not supported by the record and will not be passed upon in this Court."

The petition for certiorari contains nothing other than the unsupported allegation that a judgment adverse to petitioners was granted without notice to petitioners—utterly unsupported by the record, and never ruled upon by any court below—together with citations supporting the proposition that such procedure, which is denied by respondent, is unconstitutional.

Respondent can not respond in any way other than to deny the allegation itself. There is no legal issue and no decision below, concerning the constitution or otherwise, for this court to decide or correct.

CONCLUSION

Respondent therefore respectfully requests that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

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MOTION FOR AWARD OF DAMAGES FOR DELAY CAUSED BY APPEAL

Respondent upon its brief, filed herewith, in opposition to the granting of the petition for writ of certiorari, moves the Court for an award of damages pursuant to Rule 56 (4) of the Rules of this Court, if the petition for writ of certiorari be denied, upon the ground that it is manifest that there was no ground for granting such a writ. The amount in controversy is $19,740.00 (p. 12, Petition).

DONALD B. HOWE, JR.
Of Counsel for Respondent

CERTIFICATE OF SERVICE

This is to certify that copies of this brief and motion for award of damages were served upon petitioners through its attorneys of record in accordance with Rule 33 of the Supreme Court Rules, on October 16, 1973, by mailing same to their attorneys of record in a properly franked envelope.

DONALD B. HOWE, JR.
Attorney for Respondent

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CONCLUSION

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